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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO.3672 OF 1997

Anil Kumar Shrivastava

Versus

Municipal Corporation, Durg and another

Post for order on 4th January, 2006

Sd/-
SATISH K. AGNIHOTRI
Judge

(96)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO. 3672 OF 1997

Petitioner	:	Anil Kumar Shrivastava Age 32 years, S/o Hiralal, Moharrier, Municipal Corporation,Durg (C.G.).
	Versus	
Respondents	:1.	Municipal Corporation, Durg. Through : The Commissioner, Municipal Corporation, Durg (C.G.).
	2.	Revenue Officer, Municipal Corporation, Durg.

Present: Shri Ajay Shrivastava, counsel for the petitioner.
Miss Sharmila Shinghai, counsel for the respondent No. 1.

ORDER

(4th January, 2006)

1. The present writ petition filed under Article 226/227 of the Constitution of India challenges the legality of the impugned order dated 14.8.1997 (Annexure P-1), whereby the impugned order dated 26.4.1997 of regularization of service of the petitioner on the post of Moharrir was cancelled on the ground that the petitioner did not possess required qualification of 10th pass, for the purpose of regularization.

2. The facts relevant for adjudication are that the petitioner was appointed as daily wages worker and has been working as an muster roll labour w.e.f. 1.4.1986. The petitioner was assigned the work of Moharrir from 12.6.1990 (Annexure P-5). The petitioner admittedly has been working ever since on the post of Moharrir till

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the service of the petitioner was regularized by the order dated 26.4.1997 (Annexure P-2) on the post of Moharrir. Service of the petitioner on the post of Moharrir was cancelled vide order dated 14.8.1997 (Annexure P-1) under signature of Revenue Officer/respondent No. 2.

3. Being aggrieved, the petitioner filed this writ petition in the High Court of Madhya Pradesh at Jabalpur on 1.9.1997. The High Court, while issuing notice on 12.9.1997 "directed that the petitioner's services shall not be dispensed with without reference to the court". Accordingly, the petitioner continued in the service as Moharrir. The petitioner in this petition prays for a writ/direction to quash the impugned order dated 14.8.1997 (Annexure P-1) and direction against the respondents to regularize the appointment of the petitioner from the date of initial appointment on the post of Moharrir with all the service benefits of the regular employee. The petitioner further prays for interest on arrears of wages at the rate of 18% per annum. On reorganization of erstwhile State of Madhya Pradesh, this High Court was created and this petition was transferred from the High Court of Madhya Pradesh to this High Court.

4. Shri Ajay Shrivastava, learned counsel appearing for the petitioner submitted that regularization order dated 26.4.1997 passed in favour of the petitioner was cancelled without affording any opportunity of hearing to the petitioner, when the petitioner, while making an application on 15.12.1995 for regularization of his service on the post of Moharrir, has clearly stated in his application that the petitioner's qualification was 10th (10+2) failed and the

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petitioner was regularized by order dated 26.4.1997 knowing fully well that the petitioner was not 10th (10+2) passed. The petitioner had been working on the post of Moharrir for 5 years. It was further contended that the order of regularization was passed by the respondent No. 1 i.e. Commissioner, Municipal Corporation and the impugned order dated 14.8.1997 cancelling the order of regularization was passed by the Revenue Officer/respondent No. 2 of the Municipal Corporation, who was subordinate to the Commissioner and not competent to pass the impugned order. Learned counsel in support of his contention that the requisite qualification is not necessary after having obtained experience of the same work for 5 years, has cited decisions of the Supreme Court in **Bhagwati Prasad Vs. Delhi State Mineral Development Corporation**[1], **Gujrat Agricultural University Vs. Rathod Labhu Bechar**[2]. On the point of non-compliance of principles of natural justice, learned counsel relied on the decisions of the Supreme Court in **Ku. Neelima Mishra Vs. Dr. Harinder Kaur Paintal and others**[3], **Basudeo Tiwary Vs. Sido Kanhu University and others**[4] and **Director General of Police and others Vs. Mrityunjoy Sarkar and others**[5].

5. Miss Sharmila Shinghai, learned counsel appearing for the respondent No. 1, per contra, submitted that the order of regularization dated 26.4.1997 was cancelled because the petitioner did not possess required qualification i.e. 10th pass. Learned counsel further contended that the petitioner was not working as Moharrir

[1]AIR 1990 SC 371, [2]AIR 2001 SC 706 [3]AIR 1990 SC 1402, [4]AIR 1998 SC 3261, [5]AIR 1997 SC 249

since 1990, but he was muster roll employee as per lists of Muster Roll Employees of 10th December, 1991 (Annexure R-8), 10th March, 1992, 10th February, 1992 and 10th January, 1992 (Annexure R-9 collectively). It was further contended that services of the employees of the corporation were governed by M. P. Municipal Corporation (Appointment and Conditions of Service of Officers and Servants) Rules, 2000, wherein the requisite qualification for the post of Moharrir is 10th pass. It was pointed out that the first order of cancellation of regularization dated 26.4.1997 was passed by the Commissioner on 2.7.1997 (Annexure R-1) and communicated to the petitioner, thereafter the impugned order dated 14.8.1997 (Annexure P-1) was issued by the Revenue Officer and as such the order of cancellation of regularization was passed by the same authority i.e. Commissioner/respondent No. 1. Revenue Officer/respondent No. 2 had simply reiterated the same and communicated to the petitioner by letter dated 14.8.1997. Learned counsel further contented that the petitioner was working as daily wages employee in the corporation and he is still continuing in the same capacity. Regularization of the petitioner's service was made de-hors the rules as he has not passed high school examination certificate i.e. 10th pass, which is the required qualification for the post of Moharrir. The petitioner was regularized on probation for a period of one year and as such he did not acquire any right on the post. Learned counsel urged that in the present case, it was not necessary to afford any opportunity of hearing before passing the impugned order, whereby the petitioner's regularization was cancelled as the petitioner's regularization was

de-hors the rules and the petitioner was regularized on probation for a period of one year. Learned counsel had offered no reply to the submission that the petitioner had submitted true and correct fact that he was 10th (10+2) failed in the application for regularization on 15.12.1995 (Annexure P-7).

6. Learned counsel relied on decisions of the Supreme Court in **State of Himachal Pradesh Vs. Suresh Kumar Verma and another**[6], **E. Ramakrishnan and others Vs. State of Kerala and others**[7], **O.P. Lather & Ors., etc. Vs. Satish Kumar Kakkar & Ors.**[8], **Union of India and another Vs. Manu Dev Arya**[9] and decision of the Madhya Pradesh High Court in **Ku. Rita Bhaduri & Ors. Vs. Municipal Corporation, Durg and Others**[10]. It is admitted that the petitioner was appointed as daily wages employee on 1.4.1986 and the petitioner was assigned various types of job. The petitioner was assigned the work of Ward Moharrir in June 1990. Order dated 12th June, 1990 clearly indicates that a copy was marked to the petitioner as Ward Moharrir. The petitioner had made an application on 15.12.1995 (Annexure P-7), wherein he had clearly stated that he was appointed on 1.4.1986 as daily wages employee, thereafter in the year 1990 he was assigned the work of Moharrir in the revenue department and the petitioner was 10th (10+2) failed. The said application reads as under :-

प्रति,

श्रीमान उपायुक्त महोदय,
नगर पालिका निगम दुर्ग.

विषय – मोहर्रिर रिक्त पदों की पूर्ति हेतु ।

[6]AIR 1996 SC 1565, [7](1996) 10 Supreme Court Cases 565, [8]AIR 2001 SC 821, [9]AIR 2004 SC 2449, [10]1997 M.P.L.S.R. 109

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संदर्भ – राजस्व अधिकारी के आदेश कमांक क्यू दिनांक 8/12/1995.

महोदय जी,

सनम्र निवेदन है कि आपके द्वारा मांगी गई जानकारी निम्नानुसार है।

राजस्व विभाग के परामर्श दात्री द्वारा संकल्प कमांक 1 दिनांक 24.11.1995 के अनुसार मोहर्रिर पदों की भर्ती हेतु विभागी कर्मचारी को विधिवत सम्पूर्ण जानकारी के साथ आपके समक्ष प्रेषित कर रहा हूं।

1. कर्मचारी का नाम – अनिल कुमार श्रीवास्तव आ0 श्री हीरालाल श्रीवास्तव
2. वर्तमान पद – दैनिक पारि. समयपाल
3. नियुक्ति तिथि – 1.4.1986
4. योग्यता – दसवी (10+2) अनुतीर्ण
5. अनुभव – मेरी नियुक्ति लोक कर्म विभाग मे सन 86 मे हुआ था उसके उपरांत कार्यालय के आदेशानुसार सन 90 में राजस्व कार्यालय के मोहर्रिर कार्य करने हेतु भेजा गया था जिसे मै अपने कर्तव्य एवं निष्ठा के साथ 5 वर्षो तक पूर्ण कर रहा था।

अतः नियमित करण कर मुझे सेवा का अवसर प्रदान करने की कृपा करें।

अनिल

सही
15.12.95
आवक लिपिक
नगर पालिका निगम,दुर्ग

प्रार्थी
अनिल कुमार श्रीवास्तव
दैनिक पारि.कर्म लोक कर्म
विभाग न.पा.न. दुर्ग.

On the basis of the said application, the petitioner was regularized on the post of Moharrir by order dated 26.4.1997. The Commissioner cancelled the order of regularization of the petitioner dated 26.4.1997 on the post of Moharrir on the ground that the petitioner did not possess the requisite qualification i.e. 10th pass by order dated 2.7.1997. The petitioner had been working since June 1990 as Moharrir on daily wages basis, raising the question of his requisite qualification after having taken the work of Moharrir from the petitioner for 5 years, is not justified. It is well settled principle

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that the petitioner had got sufficient experience by rendering many years of service, and as such cancellation of regularization on the post of Moharrir on the ground that the petitioner did not possess the requisite qualification, was uncalled for and unjust.

7. The Supreme Court in Bhagwati Prasad's case (Supra) has held as under:-

> "(6)- The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications....."

8. The Supreme Court in Gujrat Agricultural University's Case (Supra) has held as under:-

> "We feel that daily rate workers who have been working on the aforesaid posts for such a long number of years without complaint on these posts is a ground by itself for the relaxation of the aforesaid eligibility condition. It would not be appropriate to disqualify them on this

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ground for their absorption, hence Clause 1 (a), need modification to this effect".

9. Admittedly, the orders dated 2.7.1997 and 14.8.1997 cancelling the order of regularization involved civil consequences and as such an opportunity of hearing must be afforded to the petitioner. In the instant case, principles of natural justice was not followed before passing the orders dated 2.7.1997 and 14.8.1997 and as such they deserve to be quashed.

10. The Supreme Court in Ku. Neelima Mishra's Case (Supra) has held as under:-

> "(19)- We find it difficult to accept the reasoning underlying the aforesaid view. Before we consider the correctness of the proposition laid down by the High Court we must, at the expense of some space, analyse the distinctions between quasi-judicial and administrative functions. An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no such obligation, the decision is called 'purely administrative' and there is no third category. This is what was meant by Lord Reid in Ridge V. Baldwin, (1963) 2 All ER 66, 75-76 :
>
> "In cases of the kind with which I have been dealing the Board of Works..... was dealing with a single isolated case. It was not deciding, like a judge in a law suit, what were the rights of the persons before it. But it was deciding how he should be treated – something analogous to a judge's duty in imposing a penalty.....So it was easy to say that such a body is performing a quasi-judicial task in considering and deciding such a matter and to require it to observe the essentials of all proceedings of a judicial character the principles of

natural justice. Sometimes the functions of a minister of department may also be of that character and then the rules of natural justice can apply in much the same way....."

"(22)- An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim audi alteram partem. It means that the decision maker should afford to any party to a dispute an opportunity to present his case. A large number of authorities are on this point and we will not travel over the field of authorities. What is now not in dispute is that the person concerned must be informed of the case against him and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken. Ridge V. Baldwin (1963 (2) All ER 66) (supra); State of Orissa V. Dr. Binapani Dei, (1967) 2 SCR 625 : (AIR 1967 SC 1269)."

11. Further in the case of Basudeo Tiwary (Supra), the Supreme Court has held as under:-

"(12)- The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the provisions of the Act, Statutes. Rules or Regulations or in any irregular or unauthorised manner. The condition precedent for exercise of this power is that an appointment had been made contrary to Act, Rules, Statutes and Regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, Statutes, Rules or Regulations etc. a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case such

> exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily enquiry notice will have to be held and in holding such an enquiry the person whose appointment is under enquiry will have to be issued to him. If notice is not given to him then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected, is not given notice of such a proceedings and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as noticed by this Court in D.T.C. Mazdoor Sabha's Case (AIR 1991 SC 101). In such an event, we have to hold that in the provision there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, Statute, Rule or Regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice. That is how S.35 (3) in this case will have to be read".

12. Reliance of learned counsel for the respondent No. 1 that under the provisions of the M.P. Municipal Corporation (Appointment and Conditions of Service of Officers and Servants), Rules, 2000, requisite qualification for the post of Moharrir is 10th pass is not in dispute. The petitioner was regularized on 26.4.1997, when these Rules were not in existence and the respondents had not pointed out any other Rules, which provides the requisite qualification for appointment on the post of Moharrir. Be that as it may, the petitioner was admittedly assigned the job of Moharrir in June 1990 and thereafter he continued to work as Moharrir, even if the requisite qualification was 10th pass that needs relaxation as the petitioner had obtained experience of working as Moharrir for 5

years without any stigma. Contention of learned counsel for the respondent No. 1 that the petitioner was working as daily wages employee needs no consideration as the petitioner admittedly has been working as daily wages employee since 1.4.1986 till 26.4.1997, when service of the petitioner was regularized under policy of the State Government dated 14th March, 1997 (Annexure R-10), which clearly provided that all the daily wages employee appointed prior to 31.12.1988, be regularized by increasing expenses on the establishment to the extent of 3.86%. The petitioner was regularized under the said policy. The contention of learned counsel for the respondent No. 1 that opportunity of hearing was not necessary because the petitioner was regularized de-hors the rule i.e. having no requisite qualification and the petitioner was regularized on probation for a period of one year is without any substance. The same deserves to be rejected on the simple ground that the petitioner had been working as Moharrir for 5 years and the petitioner had not concealed any fact with regard to his educational qualification i.e. he was 10th (10+2) failed, when the petitioner made an application for regularization on 15.12.1995 (Annexure P-7).

13. The High Court of Madhya Pradesh, while considering the case of one employee of respondent/Corporation, who was appointed as Assistant Teacher on adhoc basis and was reverted to daily rated employee without any show cause notice, quashed the order of reversion of the said employee to daily rated employee on the ground that no show cause notice was given to the employee before reverting him to daily wages employee.

14. The case of the State of Himachal Pradesh Vs. Suresh Kumar Verma and another (Supra), cited by learned counsel for the respondent No. 1 is not relevant to the facts of the present case as the facts of the said case was that the respondents were engaged in a project which have come to an end and the services were terminated for want of work. The court declined to issue any direction to re-engage in any other work or appoint against existing vacancy.

15. The case of E. Ramakrishnan and others Vs. State of Kerala and others cited by learned counsel for the respondent No. 1 is also not relevant to the facts of the present case. The facts involved in that case were regularization of field workers in the phyleriya department was in question as the filed officers were required to be selected by the Public Service Commission and the regularization was also done by the Public Service Commission. In the present case, the first appointment as daily wages workers and regularization was done by the respondent No. 1 and the order of cancellation of regularization was also passed by the respondent No. 1.

16. The case of O.P. Lather & Ors., etc. Vs. Satish Kumar Kakkar & Ors.(Supra) cited by learned counsel for the respondent No. 1, was the case of promotion to the cadre of Executive Engineer, wherein the degree/diploma in Electrical Engineering from the recognized university or its equivalent was the requisite qualification for promotion to the cadre of Executive Engineer.

17. The submission of the petitioner that the impugned order was passed by the Revenue Officer, who was not competent as the order

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of regularization was passed by the Commissioner, is not correct. The order of regularization dated 26.4.1997 and the order of cancellation of regularization dated 2.7.1997 were passed by the same officer i.e. respondent No. 1 and the impugned order dated 14.8.1997 was merely repetition of the impugned order dated 2nd July, 1997 passed by the respondent No.1/Commissioner. The petitioner further submitted that in spite of the interim relief granted by this court on 12.9.1997, the respondents had not paid full payment to the petitioner. The petitioner had not given details of the factual position as to how much has been paid and how much he was entitled to. In view of this, it is not necessary to grant relief for payment of difference of wages. However, the right of the petitioner is reserved to raise the said dispute, if any, and if so advised.

18. For the reasons stated above and in the peculiar facts and circumstances of the case, the orders dated 2.7.1997 and 14.8.1997 are quashed and set aside. The petitioner is entitled to be regularized w.e.f. 26.4.1997.

19. The petition is accordingly allowed. No order as to costs.

Sd/-
SATISH K. AGNIHOTRI
Judge

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